IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3373 OF 2007
IN
FIRST APPEAL NO.2101 OF 2005

M/s.Raja Builders ...Applicant

Versus

Shri Mustafa Jafar Shaikh ...Respondent

WITH
CIVIL APPLICATION NO.5057 OF 2005
IN
FIRST APPEAL NO.2101 OF 2005

Shri Mustafa Jafar Shaikh ...Applicant

Versus

M/s.Raja Builders ...Respondent

Shri Sandip Davahale for the Applicant in C.A.No.3373/07 and for the Respondent in C.A.No.5057/05.

CORAM : ABHAY S.OKA, J.
DATED : OCTOBER 30th, 2007.

P.C.:

1. Heard advocate appearing for the respondent in Civil No.5057 of 2005 and the applicant in Civil Application No.3373 of 2007. None appears for the applicant in Civil Application No.5057 of 2005 and the respondent in Civil Application No.3373 of 2007.

2. An appeal by the original defendant preferred against a money decree has been admitted. In Civil Application No.5057 of 2005, this Court granted

ad-interim relief in terms of prayer clause (a) subject to the appellant depositing decretal amount within a period of four weeks. Office noting shows that a sum of Rs.01,26,078/- has been deposited by the appellant in this Court.

3. The ad-interim relief granted in Civil Application No.5057 of 2005 deserves to be confirmed. Civil Application No.3373 of 2007 is filed by the respondent in appeal seeking permission to withdraw the aforesaid amount. As First Appeal is already admitted for final hearing, the amount cannot be allowed to be withdrawn unconditionally and the respondent in appeal will have to furnish adequate security for the said amount.

4. Hence, Applications are disposed of by passing following order:

(i) Ad-interim relief granted on 01st December, 2005 in Civil Application No.5057 of 2005 will continue to operate as interim relief.

(ii) It will be open for the respondent in the appeal to withdraw the sum of Rs.01,26,078/- deposited in this Court subject to furnishing adequate

security for the said amount to the satisfaction of the learned Registrar (Judicial I) of this Court. The learned Registrar (Judicial I) will hear the appellant before accepting the security.

(iii) If the respondent in appeal fails to furnish the security within a period of six months from today, the said amount shall be invested in fixed deposit in any nationalised bank and fixed deposit shall be renewed from time to time till the disposal of the appeal.

(iv) There will be no orders as to costs.

(v) Parties to act upon an authenticated copy of this order.

JUDGE